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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,301	11/24/2003	Kevin Richard McCrory	3291.2.4	4127

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EXAMINER

GREENHUT, CHARLES N

ART UNIT PAPER NUMBER

3652

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/720,301	Applicant(s) MCCRORY ET AL.	
	Examiner Charles N. Greenhut	Art Unit 3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 31-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**I. Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 31-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1.1. With respect to claim 31, examiner suggests the following changes:

1.1(a) Providing a vehicle having a longitudinal axis defining a longitudinal direction ~~substantially parallel to an intended direction of travel thereof~~, and comprising a cargo hold[[,]] containing a cargo having a ~~weight~~, weight, and said vehicle having a plurality of ~~wheels, providing during travel~~ wheels that provide the exclusive vertical support for the cargo hold....

1.1(b) These, or similar changes are required with respect to claims 31, 41, 43 and 50 because, as presented,:

1.1(b)(i) The phrase “substantially parallel to an intended direction of travel thereof” renders the claim indefinite because it is unclear what the intended direction of travel refers to. E.g., applicants vehicle is intended to travel in multiple directions.

1.1(b)(ii) The relationship between the wheels and the vehicle and cargo hold is unclear.

1.1(b)(iii) The relationship between the wheels and the step of providing exclusive support is unclear.

1.1(c) Note: The suggested changes may additionally require changes in claims depended upon 31, 41 and 50 for agreement therewith.

1.2. With respect to claim 35, the phrase "from the disengaged position" lacks antecedent basis because the door is never positively recited in that position.

## **II. Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 31-34, 40-47, and 49-50 is/are rejected under 35 U.S.C. 102(b) as being anticipated by BRADLEY (US 948,038).

1.1. With respect to claim 31, 41, 43 and 50 BRADLEY discloses providing a vehicle having a longitudinal direction and cargo hold containing cargo (2), plurality of wheels providing exclusive vertical support (Fig. 2), positioning the vehicle on a bearing surface (P), positioning a support (O) to directly contact the cargo hold and remove from the plurality of wheels at least a portion of the weight of the cargo (Fig. 3), anchoring (O), and unloading the cargo by rotating the bearing surface about the longitudinal axis (Fig. 3).

1.2. With respect to claim 32, BRADLEY additionally discloses a frame and door pivoting about a longitudinal axis (D) and inherently discloses cargo having a weight substantially greater than the bearing capacity of the frame disengaged from the door,

i.e., with the side door closed the vehicle of BRADLEY could hold a substantially greater amount of rock, ore or coal (page 1 lines 35-40).

1.3. With respect to claim 33-34, 40, 42 BRADLEY additionally discloses an upper and lower frame member, the door having an upper member hingedly attached to the upper frame member, and a lower edge selectively engaged with the lower frame member, exerting a vertically upward force on the lower frame member and anchoring (O).

1.4. With respect to claim 44-47, and 49, BRADLEY additionally discloses the cargo area having a floor, front wall, back wall and first and second side walls, the side wall comprising a door (D), pivoting about an axis extending the longitudinal direction, the door substantially the length of the side wall and rotating about a longitudinal axis to unload cargo (Fig. 3).

### **III. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 35 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over BRADLEY in view of PROPST (US 3,542,220).

1.1. With respect to claim 35, BRADLEY fails to teach translating the door vertically upward to move the lower edge into engagement with the lower frame. PROPST teaches translating the door vertically upward to move the lower edge into

engagement with the lower frame (Col. 3 Li 14). It would have been obvious to one of ordinary skill in the art to modify BRADLEY with the latching step of PROPST in order to facilitate selectively engaging the door with the frame.

2. Claim(s) 36-37 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over BRADLEY in view of PROPST and further in view of STINSON (GB 2,152,448 A).

2.1. With respect to claims 36-37, BRADLEY fails to disclose a first and second lifting mechanism to disengage the door. STINSON teaches a first and second lifting mechanism (58). It would have been obvious to one of ordinary skill in the art to modify BRADLEY in view of PROPST with the lifting mechanisms of STINSON in order to selectively engage or disengage the door.

2.2. With respect to claims 38-39, BRADLEY additionally discloses anchoring the vehicle to the bearing surface and rotating the bearing surface (Fig. 3).

3. Claim(s) 48 and 51 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over BRADLEY in view of WINTER (US 2,774,493 A).

3.1. With respect to claim 48 and 51 BRADLEY fails to disclose vibration applied through the supports. WINTER discloses vibration applied through supports (16)/(Col. 2 Li. 46). It would have been obvious to one of ordinary skill in the art to modify BRADLEY with the vibration supplying supports of WINTER in order to facilitate cargo discharge.

#### **IV. Response to Applicant's Arguments**

Applicant's arguments entered 1/19/06 have been fully considered.

1. Applicant argues the amended drawing overcome the objections of the previous office action.

This argument is persuasive. The objections to the drawings are therefore withdrawn.

2. Applicant argues that claims 31 and 51, as amended, distinguish over BRADLEY. This argument is not persuasive. Examiner acknowledges the difference in the nature of the BRADLEY support (O) and those described in applicant's specification. In order to meet the limitations of the phrase "positioning a support *to* directly contact the cargo hold *and* remove from the plurality of wheels at least a portion of the weight of the cargo" (Emphasis supplied), it is not necessary to show that the support removes a portion of the weight. A showing that the support is positioned *to* achieve that end, e.g., BRADLEY support (O), is sufficient to meet the claim limitations. Applicant's attention is also directed to WINTER (US 2,774,493 A) concerning supports of the type disclosed by applicant. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

3. Applicant argues that claims 41, as amended, distinguish over BRADLEY. This argument is not persuasive. Examiner acknowledges the difference in the nature of the BRADLEY support (O) and those described in applicant's specification. In order to meet the limitations of the phrase "positioning a support *to* directly contact the cargo hold *and* resist deflection of the cargo hold toward the bearing surface" (Emphasis supplied), it is not necessary to show that the support resist deflection of the cargo hold toward the bearing surface. A showing that the support is capable of achieving that end, e.g., BRADLEY support (O), is sufficient to meet the claim limitations. Applicant's attention is also directed to WINTER (US 2,774,493 A) concerning supports of the type disclosed by applicant. Although the claims are

interpreted in light of the specification, limitations from the specification are not read into the claims.

**V. Conclusion**

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
2. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.
3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.



Art Unit: 3652

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



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